

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

Case No. 18-cv-07591-CRB (JSC)

**ORDER RE PRIVILEGE LOG
DISPUTE**

Re: Dkt. No. 766

Plaintiff has withheld numerous documents based on § 1157, and Walgreens has filed a dispute letter challenging the adequacy of these privilege log entries. See Dkt. 766. In relevant part, § 1157 states:

Neither the proceedings nor the records of organized committees of medical ...
staffs in hospitals ... having the responsibility of evaluation and improvement of the
quality of care rendered in the hospital ... shall be subject to discovery.
Cal. Evid. Code § 1157(a); see also Mt. Diablo Hosp. Dist. v. Superior Ct., 183 Cal. App.
3d 30, 34 (1986).

Walgreens contends that Plaintiff's privilege log descriptions for these documents are deficient because they do not contain enough information to establish that the withheld documents are subject to § 1157. Dkt. 766 at 1–3. Walgreens identifies twelve example entries that it claims reflect the deficiencies in Plaintiff's privilege log. See id. Plaintiff responds that the entries contain sufficient information to establish the basis of § 1157 privilege. Id. 4–6.

The party asserting privilege has the burden of demonstrating the basis for its privilege claims. Brown v. Superior Ct., 168 Cal. App. 3d 489, 500–01 (1985); Doe v.

1 Pasadena Hosp. Ass'n, Ltd., No. 218CV08710ODWMAA, 2021 WL 4557221, at *4 (C.D.
2 Cal. June 7, 2021).

3 The Court finds that Plaintiff has failed to carry its burden of providing enough
4 information to establish that the withheld documents fall within the scope of § 1157. For
5 several entries, Plaintiff appears to rely solely on the fact that the relevant committee is
6 named “Performance Improvement” or “Quality Improvement” to substantiate its assertion
7 that the withheld document relates to evaluating or improving quality of care. See, e.g.,
8 Dkt. 766–4 (Vol 4, Row 29; Vol 4, Row 93; Vol 5, Row 31; Vol 5, Row 42). But the
9 name of the committee alone does not provide enough information to support an assertion
10 of privilege. Cases—including those cited by Plaintiff—make clear that additional details
11 about the function and responsibilities of a committee are required to establish that the
12 committee’s work concerns efforts to improve quality of care. See, e.g., Santa Rosa
13 Mem’l Hosp. v. Superior Ct., 174 Cal. App. 3d 711, 717 (1985) (plaintiff asserting § 1157
14 detailed the specific functions of the committees at issue); Doe v. Pasadena Hosp. Ass’n,
15 Ltd., No. 218CV08710ODWMAA, 2021 WL 4557221, at *2 (C.D. Cal. June 7, 2021)
16 (same).

17 There are other deficiencies as well. Some entries fail to provide enough
18 information about the withheld document to establish that it is protected under § 1157.
19 See, e.g., Dkt. 766–4 (e.g. Vol 4, Row 4 stating only “Performance Improvement Program
20 document”; Vol 5, Row 42 stating only “Quality Improvement Summary Document”; Vol
21 7, Row 136 stating only “Discussion of credentialing and policies and procedures”). Other
22 entries were changed during the course of preparing the joint dispute letter. Dkt. 766 at 7;
23 see also 766–4 (Vol 5, Row 33 “Billing Practice Review” changed to “Charting Practice
24 Review”). The Court agrees with Walgreens that the changes Plaintiff made to certain
25 descriptions raises questions about the adequacy of the privilege log entries. See Dkt. 766
26 at 7.

27 While the privilege log entries are deficient, the Court finds that in camera review
28 provides a more expeditious path forward than supplementation. Accordingly, Plaintiff

1 shall email the documents set forth in Exhibit 4 to JSCsettlement@cand.uscourts.gov by
2 close of business on **November 29, 2021**. If the Court determines that the documents were
3 properly withheld under § 1157, the matter will be deemed resolved. If not, the Court will
4 enter a further order regarding the process for addressing the deficiencies.

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7 **IT IS SO ORDERED.**

8 Dated: November 23, 2021

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11 JACQUELINE SCOTT CORLEY
12 United States Magistrate Judge
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United States District Court
Northern District of California